



Planning Department

**TOWN OF ACTON**  
472 Main Street  
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**MEMORANDUM**

**To:** Planning Board

**Date:** July 5, 2006

**From:** Roland Bartl, AICP, Town Planner *R.B.*

**Subject:** Woodlands at Laurel Hill Lot 4 – Senior Residence Special Permit Application

Attached is an application for a Senior Residence Special Permit for "Lot 4" of Woodlands at Laurel Hill. The Lot 4 development had been previously approved with conditions by the Board of Appeals as part of a larger a 40B project, which includes on Lot 4 a 64-unit homeownership project without age restrictions and 25%, or 16 affordable units, and 296 rental units on adjacent land. Also attached are various departmental comments, the Board of Appeals' decision on the 40B project, and the Memorandum of Agreement between Woodlands and the Town as amended.

<b>Location:</b>	Off Nagog Park Drive
<b>Applicant:</b>	Woodlands at Laurel Hill, LLC; David E. Hale , Manager
<b>Address:</b>	c/o Omni Properties LLC, 676 Elm St., Suite 3, Concord, MA 01742
<b>Owner:</b>	The applicant (as Recreational Realty Trust, LLC)
<b>Engineer:</b>	Places Site Consultants, Inc., Holden MA
<b>Units:</b>	64
<b>Affordable Units:</b>	6
<b>Street:</b>	Laurel Hill Drive
<b>Street Length:</b>	1300 +/- proposed
<b>Map/Parcel:</b>	B-5/7
<b>Zoning:</b>	R-10/8, Affordable Housing Overlay Sub-district A
<b>Hearing Date:</b>	July 11, 2006
<b>Decision Due:</b>	September 30, 2006; as per agreement with Board of Selectmen

This application under section 9B of the zoning bylaw comes as a proposed modification of the Woodlands 40B project affecting Lot 4<sup>1</sup> only. The aforementioned 40B permit and Agreement between Woodlands and the Town anticipate this application for a Senior Residence special permit for homeownership senior restricted housing with a 10% affordability component<sup>2</sup> for what is essentially the same development plan on Lot 4.<sup>3</sup>

<sup>1</sup> Early in the 40B approval process, Lot 4 appeared only as the back portion of Acton Town Atlas parcel B-5/7. Since then its area has increased to include additional land parcels, or portions thereof, in Acton (Town Atlas parcels B-5/9 and B-5/42) and Westford (Map 2 – Parcels 18 and 21) shown on plan sheet E-1.

<sup>2</sup> In the event of approval by the Planning Board (which may be with conditions) of essentially the same plan, the agreement pegs a \$24,228 payment to the Town to each of the 58 proposed market-rate senior unit constructed and sold, for a total of \$1,405,224. This exceeds by \$901,224 other payments made or

The status of the 40B development plans is not final. The Board of Appeals approved preliminary plans, more or less, and conditioned and delegated the refinement of the plans to the definitive and final stage to be overseen by Town staff. Since the entire plan is also a subdivision, the final record plan endorsement will not occur until that work is completed. From a practical standpoint, the review of the Senior Residence special permit application for Lot 4, and conditions of the Planning Board's special permit, if granted, are be part of staff's post-40B permit review process.

### **Zoning Compliance:**

As a 40B project, the development has the benefit of a list of waivers from the Acton zoning bylaw and other local laws and regulations. The zoning waivers granted in the 40B approval do not carry over to a special permit under section 9B – Senior Residence. The Senior Residence project on Lot 4, if approved, must comply with section 9B and all other requirements of the Acton zoning Bylaw and the conditions of the Planning Board special permit, if granted.

ZBL Section 9B itself provides some flexibility on dimensional standards where density bonus options are used to boost the affordable housing percentage. The applicant is proposing to use the density bonus option that would yield 10% affordable units (9B.12.3.1). The proposed plans appear to comply with the ZBL requirements of section 9B. The following comments on particular subsections, from which the applicant has requested waivers, where a comment seems appropriate or helpful, or where the Planning Board can make a judgment call based on waiver provisions contained in ZBL section 9B:

**9B.2.2 Concurrent subdivision plan filing. Waiver requested.**

In my opinion, this section is not applicable. The subdivision, including the subdivision street Laurel Hill Drive, was approved under the 40B permit. Lot 4 is one lot in the Woodlands subdivision at the end of Laurel Hill Drive. There is no need for a concurrent subdivision filing.

**9B.5.3 Setbacks. Waiver requested.**

Under section 9B.12.3.4 the Planning Board can adjust or waive dimensional requirements as reasonable and necessary to facilitate the production of affordable units under a density bonus option. This plan seems to account for decks and patios.

**9B.5.4 Building separation. Waiver requested.**

It appears to me that the buildings as proposed comply with the standard minimum separation requirements. Under section 9B.12.3.4 the Planning Board can adjust or waive dimensional requirements as reasonable and necessary to facilitate the production of affordable units under a density bonus option.

**9B.8 Environmental protection.**

Wastewater will flow to Westford to a plant with advanced treatment systems.

**9B.9.1 Common land area. Waiver requested.**

Section 9B.9.1 has been amended at the 2006 Annual Town meeting to read: "In a

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promised in the agreement following the approval of the 40B project, and would bring the total of all payments to \$1,905,224. This includes a \$500,000 "base payment" due under either scenario. The funds are to be used "toward police, fire, and emergency public infrastructure improvements for North Acton".

<sup>3</sup> As compared to preliminary plans approved under the 40B project, the applicant has modified the shape of the loop road from an oval to a somewhat triangular shape, and the arrangement of the buildings and units on the site has also changed a bit. The basic layout scheme however is very similar.

SENIOR Residence development, except for the conversion to a Senior Residence development of a project approved under MGL Chapter 40B before January 1, 2006, at least fifty percent (50%) of the TRACT OF LAND in Acton shall be set aside as Common Land in Acton for the use of the SENIOR residents or the general public.” Therefore, the portions of Lot 4 in Westford can be counted towards the common land area calculations. With that, it appears that the common land is shy of the standard minimum requirements by a couple of tenth of an acre. I cannot determine with certainty if the drainage facilities are subtracted from the common land calculations on the plan. If not, the deficit would be larger. Under section 9B.12.3.4 the Planning Board can adjust or waive dimensional requirements as reasonable and necessary to facilitate the production of affordable units under a density bonus option.

9B.9.1.1 Wetlands in common land. Waiver requested.  
See previous comment.

9B.9.2 Use of the common land.  
Most of the common land will be subject to a State conservation restriction for wildlife habitat protection purposes, which essentially defines the allowed uses more restrictive than, but consistent with the section 9B.9.2 and its subsections.

9B.10 Accessibility/adaptability.  
There is no specific acknowledgement in the application of this requirement. I assume the applicant and their architect are aware of it.

9B.11 Age restrictions.  
The proposed restrictions seem reasonable and consistent with the intent of this section of the zoning bylaw. They need to be folded into the master deed. DHCD has recently issued draft regulations for affordable senior LIP housing projects. If they go into effect at a time so as to affect this project, some adjustments may have to be made to this and to other sections of the master deed, affordable unit deed restrictions and deed riders. See also ACHC comments.

9B.12 Affordability.  
The application contains proposed affordable unit deed restrictions and deed riders that appear to be intended to be in compliance with LIP program guidelines. This is consistent with the intent of the affordability provisions contained in this section of the zoning bylaw, and is a prerequisite for the affordable units to be counted to the State listed affordable housing inventory for Acton, counting towards the 10% goal. Having not reviewed the restrictions in detail, I would recommend that a condition to ensure LIP program compliance should be included in any special permit. See also ACHC comments in this regard. All affordability restrictions should be in perpetuity.

9B.12.3.1 Density bonus option/increased percentage of affordable units.  
The applicant proposes an increase in density to 4 units per acre (from 3) for the inclusion of 10% affordable units (from 5%). The density calculation includes the land in Westford, which is consistent with the zoning bylaw's allowance of area and frontage in adjacent towns for use in meeting minimum building lot requirements in Acton. It also consistent with case law, which holds that land in an adjacent town can be used to meet density or FAR calculations. With that, the proposed density is 3.89 units per acre. The affordability percentage is 10% or 6.4 units. This yields 6 units when rounded down in accordance with section 9B.12.3.3.

#### 9B.13 Streets, Utilities, and Lighting.

This section refers to the subdivision rules as a guide, but not as a requirement, when designing proposed streets and ways. See discussion below. It also gives the Planning Board the right, but not the obligation to regulate outdoor lighting in Senior Residence projects. I would recommend that a special permit decision should not regulate private lighting attached to residential units or buildings, but only that street lights comply with the appropriate sections of ZBL section 10.6.2.2 (luminaire cut-off, shielding, and wattage limits). We have received a street lighting plan that looks reasonable, but we have not evaluated specific compliance at this time. In the end I would probably look towards a compliance certification by an engineer.

#### Section 7 Signs.

Just so the Board is aware of it, there is a proposed residential development identification sign proposed in the fork of the loop. Its display area exceeds the Acton zoning standards. However, the sign is located in the Laurel Hill Road layout, which was approved under the 40B permit. Therefore, the proposed sign has protections under the 40B permit.

### Subdivision Standards

The proposed road within the development is not proposed as a subdivision street. Subdivision Rules (SRR) standards are referred to in section 9B of the zoning bylaw more as a guideline for proposed roads and ways, but not as strict requirements. Therefore, the Board has retained its usual liberty to grant waivers from the SRR as deemed appropriate for the situation. The following discusses some of the requested waivers by section. No mention indicates 'no objection' on my part or not applicable because the subject is outside of Lot 4 and therefore governed by the 40B permit. See also Engineering Department review comments.

#### 8.1.9 Prohibition against 4-legged intersections.

The intersection is within the subdivision street layout approved under the 40B permit and thus governed by it.

#### 9.1.1 Cross-section.

The proposed 22-foot pavement width is a bit nonsensical. Laurel Hill Drive as it comes up from Nagog Hill Road to the 4-way intersection has a pavement width of 24 feet. If the concern is to keep the pavement width consistent then the 24-foot width should be maintained throughout the loop. 24 feet allow two 8-foot travel lanes for a tight but doable passage around parked vehicles. 20 feet provides comfortable two-way passage, but no allowance for parked vehicles – a driver must wait and allow oncoming traffic to pass first. 22 feet does not add any utility to the 20 foot width – it only adds pavement. The SRR standards, assuming a directional split at about the middle of the loop, and a traffic volume of about 6-7 daily trip ends per unit, make the road eligible for low-intensity designation and a 20-foot pavement width. In conclusion, I recommend reducing the pavement width to 20 feet.

#### 9.6.3 Sidewalk.

I recommend against a waiver from the sidewalk requirement. One side of the loop should have a sidewalk. I realize that much of the sidewalk would be over driveways, but so be it. It is a poor design – see comment about snout house below.

## Special permit rules – requested waivers

The list of requested waiver is consistent with a list that generated based on my knowledge of what would be duplicative of information that needs to be submitted for the completion of the 40B plans. That said, I note that the development on Lot 4 must comply with local zoning standards and the conditions of the Planning Board special permit, if granted, which may include certain design standards from the Subdivision Rules.

For instance, water balance calculations under the 40B permit would show compliance with laxer State recharge requirements, whereas the Town's standard requirements are more stringent requiring post development 100% or greater recharge of predevelopment conditions.

## Other

- Snout houses.  
This development will feature nothing but garage doors and driveways when seen from the street. It is poor design driven by the belief that every unit must have a two-car garage, be on one level, etc - not a candidate for a design competition award.
- The common land boundary should be shown on the site plan sheets S-1 and S-2, and on the grading and drainage plan sheets GD -1 and GD-2.
- The design engineer should scrutinize the plan for potential errors to be corrected. I did not check for any thing in great detail, but (to name what remember looking through the plan) –
  - I ran across parking space dimensions that did not meet ZBL requirements;
  - on plan sheet L-1 the layout for Laurel Hill Road seems to have slipped off to the side;
  - I could not quite follow the data and categories in the zoning compliance table;
  - There appears to be a meaningless dashed line on sheet GD-2 near basin R.
- We have not received any comment from the Acton Water District, but I assume they would be no different from whatever their comments were with respect to the 40B project review.

## In Closing

These comments, engineering comments, and ACHC comments are perhaps the most lengthy and substantive here. I would recommend that the hearing be continued to, say August 8, to see if all these could not be addressed through appropriate plan and document revisions before then. We will have to draft a decision. The shorter it can be, the faster it will go out. And then, the plans are already one step close to final sign-off. At this point I am not proposing to extend the decision deadline.

Cc: Engineering Dept.  
Town Manager  
Town Counsel  
Applicant

**Kim DelNigro**

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**From:** Robert Craig

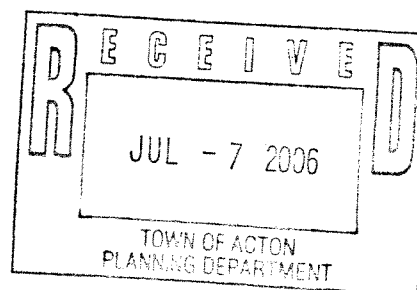
**Sent:** Friday, July 07, 2006 10:30 AM

**To:** Kim DelNigro

**Subject:** Senior Residence Special Permit Application for Woodlands at Laurel Hill

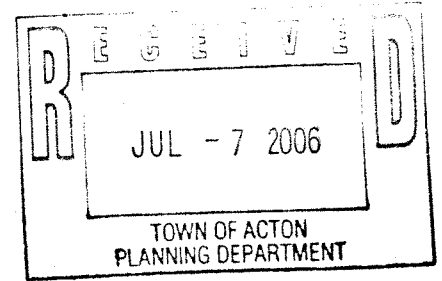
Kim: I am out of state on vacation this week. However, I did bring with me and review this application. Aside from possibly re-spacing one hydrant on the layout, I have no further comments. I will be back in the office on Monday if you have further questions. Thanks.

Chief Craig



7/7/2006

**TOWN OF ACTON**  
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**Engineering Department**

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**INTERDEPARTMENTAL COMMUNICATION**

**To: Planning Department**

**Date: July 6, 2006**

**From: Engineering Department**

**Subject: Senior Residence Special Permit - Woodlands at Laurel Hill**

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The Engineering Department has reviewed the above-mentioned plan dated June 9, 2006 and we have the following comments:

1. The Stormwater Analysis that was submitted with the Senior Residence Special Permit is a partial revision of the previous drainage calculations that were submitted with the Comprehensive Permit. The new stormwater calculations analyze the easterly portion of the Woodlands @ Laurell Hill, including Lot 4 (Senior Residence). The original stormwater analysis used assumed land coverages for the proposed conditions in order to size detention basins and limit the outflow to pre-existing conditions. The engineer has submitted the revised stormwater analysis in order to analyze the proposed conditions as shown on the plans for the Senior Residence and determine the interior runoff flows so that they can size the on-site drainage system accordingly. The engineer should include the calculations to determine the design flow capacity of the proposed drainage pipes so that we can compare the pipe flow capacities to the peak flows in the drainage calculations. We did not see the pipe capacities listed for all the drainage pipes being proposed on the site. Based on our conversation with the project engineer, the proposed drainage pipes and catch basin grates have been sized to handle the 25-year design storm event.
2. Based on the latest Stormwater Analysis for the Senior Residence, the engineer has shown that the post development peak runoff rates for a 10-year design storm will not exceed the pre-existing conditions.
3. The engineer has stated in the past that the proposed drainage system will comply with the Massachusetts Stormwater Management Policy. Prior to the building permits, we would like copies of the stormwater management forms and the supplemental documentation/calculations that show compliance with these standards. We want confirmation for our records that shows the proposed drainage system complies with the design guidelines in the Stormwater Policy.
4. No water balance calculations were submitted with these plans.

5. The engineer should correct the label for the outlet control structure for the roof drain collection/detention system from **RD2** to **RD3**.
6. We noticed some inconsistencies between the drainage pipe data shown in the tables for the drainage pipes versus the information shown on the road profile. The following list shows some of the inverts that did not match on the plans:

	<u>Road Profile</u>	<u>Drainage Table</u>	
• DMH 17+75	<b>12"=282.28</b>	<b>15"=282.74</b>	from DMH 31+20
• DMH 28+60	12"=285.50	12"=285.80	to DMH 31+20
• CTBs 31+13	rim=291.68	rim 291.86	
• DMH 31+20	12"=288.05	12"=288.10	from CTB 31+13
• CTB 28+50	CTB 27+75		

7. The rim grade for leaching catch basin 20+25 (elev=284.50) that is shown in the Table seems to be higher than the proposed grades shown on the plans.
8. This plan for the Senior Residence does not show the drainage pipes and structures directly behind the buildings in Westford that discharge into Detention Basin O. The final plans for the Comprehensive Permit will need to be revised to show the final elevations as proposed in this stormwater analysis.
9. The engineer should revise the plans so the drainage pipes from Detention Basin R to the outlet pipe at the wetlands (FES CC2) are shown and labeled on the plans.
10. The engineer will need to specify the orifice sizes and elevations within the outlet control structures and the roof drain detention manholes on the plans.
11. The engineer will need to show the design information such as the proposed elevation of the pipe inverts for the roof drain detention system on the plans.
12. The engineer needs to add the information for the drainage pipes between detention basins P & Q and Detention Basins Q & R on the plans and tables.
13. The engineer should show the roof drain connections from the units to the main roof drain systems on the proposed plans.
14. The engineer needs to show that the gas/oil hoods in the proposed catch basins have a watertight seal to prevent oils from seeping into the discharge pipe.
15. The drainage detail for the weir wall should identify the locations where these weir walls will be installed on the site. These locations should also be clearly labeled on the plans. The engineer should add some notes in the detail and the drainage system operation and maintenance plan to describe when and why these planks should be installed or removed from the weir wall.
16. A note should be added to the plans referencing the National Geodetic Vertical Datum that was used for the elevations shown on the plans. The Town requires the elevations referenced to the National Geodetic Vertical Datum of 1929. Prior to construction, the engineer should submit the construction drawings showing at least two temporary benchmarks on the site. The temporary benchmarks should be



located on fixed objects that will not be disturbed during construction.

17. The existing property line monumentation such as the iron rods, concrete bounds and drill holes are not labeled on the proposed development plans. We are concerned that some of these points will be disturbed and/or destroyed during construction. These monuments should be labeled on the proposed development plan along with a note to mark these points in the field prior to construction.
18. We would not object to allowing the surveyor to set concrete bounds as property markers instead of stone bounds that are similar in dimension.
19. The engineer should show the crest vertical curve for the loop road at about Station 22+50.
20. The engineer should identify the elevation of estimated high groundwater in the vicinity of the proposed drainage basins and the roof drain collection/detention systems to confirm the storage capacity of these detention facilities will not be diminished due to a groundwater table that is higher than the bottom of the proposed detention facilities.
21. The plan & profile of the proposed roads shows the roadway to be located within cut sections along the existing ground surface. The engineer should add a note to the plans requiring subdrains along the roadways.
22. Prior to the building permit, the applicant will have to propose street addresses for the units on the site. We are concerned about the potential confusion with the building addresses and the individual unit numbers, especially during a 911 emergency. The applicant will need to obtain final approval for the street addresses from the Engineering, Police and Fire Departments. These street addresses should coincide with the addresses that will be created for the other units that were approved in the comprehensive permit.
23. The applicant will need to obtain approval from the Acton Police Department, the Acton Fire Department and the Town of Westford for the proposed street names within the development to ensure that there is no confusion during a 911 emergency with other existing street names in Acton or Westford. Acton already has a Laurel Court which could be an issue for the proposed street name Laurel Hill Drive
24. We would also recommend that the applicant incorporate some language for the private way into their legal documents and maintenance agreements so that future residents clearly understand the Town will not be responsible for snow plowing or any other related maintenance and that the roads will not become public ways.
25. The engineer should label the maximum allowable cross slopes for the walkways on the typical details. There should also be a note added to the plans stating that walkway construction, including handicap sidewalk ramps will comply with the Architectural Access Board. The Town typically uses a more conservative maximum allowable sidewalk cross-slope of 3/16 inch per foot (approx. 1.6%).

26. The engineer should label the maximum allowable ramp slope for a handicap accessible ramp.
27. There are no sidewalks being proposed along the loop road for this project.
28. We recommend that an as-built plan showing the buildings, pavement, drainage and utilities be required at the conclusion of construction to show that the project was constructed according to the approved plans.
29. The engineer should add a note or detail to the plans stating the dimensional requirements for a standard parking space.
30. We noted that some of the parking spaces are only labeled to be 18 feet in length. The Zoning Bylaw requires a standard parking space to be 18.5 feet in length by 9 feet wide.
31. There should be a note added to the details for the signs requiring all traffic related signage to comply with the latest edition of the Manual on Uniform Traffic Control Devices.
32. The proposed setbacks for the new buildings, structures and parking facilities are not labeled on the development plans.
33. The engineer should add a note to the plans requiring the removal of organic and unsuitable material underneath the gravel layers for the proposed road, driveways, parking areas and sidewalk.
34. If this project was surveyed using the Massachusetts State Plane Coordinate System, we would like copies of the coordinate data. As part of our Town Atlas updates, we want to begin reformatting our Atlas to match the State's mapping system.

**Roland Bartl**

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**From:** Roland Bartl  
**Sent:** Friday, May 19, 2006 4:30 PM  
**To:** 'David Hale'; Stephen Anderson  
**Cc:** Don Johnson; 'Louis N. Levine'; 'mbrooks@omniproperties.com'; Garry Rhodes  
**Subject:** RE: Special permit

David:

As we discussed, I had suggested that the 35-day review window (ZBL 10.3.3) might be shortened and that you should talk to each reviewing department/board to obtain their consent or waiver from this rule. With that, the time from submission to the hearing could be shortened by as much as 15 days or so, depending on the timing of the application relative to the Planning Board's meeting schedule and weekly newspaper publication dates.

Further, I had indicated that, if nothing has changed from the physical plans as approved under the 40B permit (except for advancing plans to meet 40B permit conditions), then the initial staff review of the senior residence special permit application would not have to repeat the plan review that was or is being done for the 40B project. Therefore, the substance of the staff review on this coming application would be focusing primarily on the changes from "open" housing to "senior" housing and the changed affordability percentages. There may, of course, be some recommendations for physical changes emerging out of these reviews, but I suspect they would be rather limited. Also, the Planning Board may have some limited changes that they might want to see. They are fully aware of the agreement you have with the Board of Selectmen.

We still have to review the plans as they progress to the final sign-off since the Board of Appeals' decision defers a lot of that to the staff level. In my mind this can go parallel with the senior housing application and I would prefer doing the detailed engineering plan review under the 40B follow-up process rather than bringing it into the realm of the senior residence special permit.

I don't think a waiver of the submission requirements is appropriate for the numbers of application copies. But, if the plans are the same, I can see that we would not need more than 2-4 full size plans and the rest could be reduced 11x17 sheets. Also, I don't want plans for the entire project. Rather, I think for an overview a sheet without details would suffice that shows the locus in context with the rental portion of the project and access from Nagog Park Drive. The rest of the plan sheets need to focus only on the Lot 4 development itself. They should by now have advanced far enough to have on them more or less the info that the special permit rules ask for.

Looking at the 40B approval, the zoning bylaw, and the special permit rules I think waivers might be appropriate from the following requirements of the special permit rules:

Development Impact Report  
Documentation on plans and deeds of record unless relevant for the application  
Drainage Calculations  
Earth Removal Calculations  
Water Balance Calculation  
Traffic Study

I think all these have been covered in the 40B approval in some fashion and don't need to be rehashed here.

Regards -

*Roland Bartl, AICP  
Town Planner, Town of Acton  
472 Main Street*

7/5/2006

Acton, MA 01720  
978-264-9636

-----Original Message-----

**From:** David Hale [mailto:dhale@omniproperties.com]

**Sent:** Tuesday, May 16, 2006 5:27 PM

**To:** Stephen Anderson

**Cc:** Don Johnson; Louis N. Levine; mbrooks@omniproperties.com; Roland Bartl; Garry Rhodes

**Subject:** Special permit

Steve:

First an update.

We introduced the Avalon team to Gary Rhodes, Bruce Stamski, Cory York and Chief Craig this morning to open the lines of communication and make sure we all understand what need to happen to get the project out of the ground this year. We discussed a lot of logistics and time tables etc. I think the meeting went well and expect a good working relationship to develop.

Avalon is indifferent to the 55+ at best but will comply with the terms of our agreement and wants a good relationship with the town. In any event, Avalon needs to have the 55+ situation settled in order to move forward.

We are getting ready to submit the special permit application. We have a meeting with all the development consultants on Friday to coordinate. We expect to submit early in June. In order to meet the time frame, we need to get in and out of the planning board quickly. I have spoken to Roland regarding the requirements. Since the project has been reviewed by all town boards, I would like to ask you and Don to ask the boards to submit a note to the planning board that says they have reviewed the project and don't need the 35 days before the hearing. In addition, we will be asking for waivers of some of the typical submission requirements ( such as 24 sets of plans) as the town and various boards already have much of the material. We will work with Roland on this but hope you will be able provide advice as to how to make this as to make this a smooth and efficient as possible.

We will also make sure Gary sees all the submissions and is comfortable asking the ZBA to sign off on the current plans before the special permit hearing. Based on what he saw today, I think he is comfortable.

Let me know if you would like to have a conference call. Otherwise, I will give you another update after Friday's meeting.

We appreciate you help.

David E. Hale  
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Fax: 978.369.4983  
Cell: 978.505.1720  
[dhale@omniproperties.com](mailto:dhale@omniproperties.com)

7/5/2006

## **Acton Community Housing Corporation**

**Nancy Tavernier, Chairman**

**TOWN OF ACTON**

Acton Town Hall

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TO: Planning Board  
FROM: Nancy Tavernier, Chair, ACHC  
SUBJECT: Senior Residence Special Permit Application for The Woodlands  
DATE: June 29, 2006  
cc BOS, Town Counsel

Members of the ACHC reviewed the Application for The Woodlands Special Permit at our June 15, 2006 meeting. Having followed The Woodlands Comprehensive Permit process carefully, we anticipated this application. We understand the rationale for this request. ACHC was not a partner to the negotiations between the Town and the Developer in regard to the establishment of a public safety infrastructure fund but we know the fund will be generated as a result of the condominium component of the project. None of these funds from the developer will be used for affordable housing, so the actual provision of 6 affordable units is essential to maintain the intent of the Comprehensive Permit. ACHC is committed to guaranteeing these units are added to our Subsidized Housing Count.

In order to be added to the Housing Count, these 6 units must be approved by DHCD certifying they are deed restricted and the Town is protected through a regulatory agreement that insures their affordability into perpetuity. In light of new guidelines being promulgated by DHCD for age restricted units, we do have some specific suggestions that should be included in the Permit:

- The selling prices of the affordable units must be set at what is affordable to a 3 person household earning 80% of area median income and are not required to reflect a 10% window of affordability. The goal is to have the monthly housing costs equal to 30% of the monthly income of a household earning 80% of the area median income.
- The proposed selling price of the units at \$160,000 is just barely affordable for a household of 3, with a maximum income of \$59,550, when making a down payment of 5%. It is more affordable for greater down payments. However, if calculated for a 2 person household with a maximum income of \$52,950 and a 5% down payment, the selling price is too high. It appears that DHCD allows the income of the 3 person household to be used as the maximum, but the reality is it will most likely be a 2 person household.

- The interest rate used in the affordability analysis is a time-sensitive interest rate and should be approximately a quarter percent above the latest prevailing fixed 30-year rate as listed on Freddie Mac's interest rate survey.
- The Town/ACHC should perform annual monitoring and certification to DHCD that LIP units continue to serve as owners' residences.
- The Town/ACHC should perform annual certification to DHCD that any LIP units that have been resold during the year have been resold in compliance with LIP requirements.
- There shall be no occupancy restriction except that one household member must be age 55 or older;
- Children age 18 or younger cannot be excluded from the LIP Units;

The following items apply to 55 and over households:

- Elder households do not have to be first time homebuyers.
- Elder households may purchase a LIP unit with cash.
- If the purchase is financed, only the occupants of the unit may sign the mortgage.
- Household assets shall not exceed \$50,000 in value.
- Elder households must meet the following income and asset test:

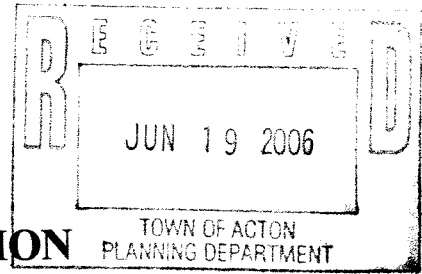
In the case of age-restricted homeownership units the purchaser household may own a dwelling (to be sold) in which the purchaser has no more than \$200,000 in equity. The value of assets shall be computed on the basis of net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding equity accounts in HUD homeownership programs or state assisted public housing escrow programs. The value of necessary items of personal property, such as furniture or automobiles, shall be excluded.

Determination of assets shall be based upon a full and fair present cash value of the asset at the time of application to the program. If a potential purchaser divests him/herself of an asset for less than full and fair cash value of the asset within two years prior to application, the full and fair cash value of the asset shall be included for purposes of calculating eligibility.

- The LIP Deed Rider is the most critical tool for ensuring that a homeownership unit remains affordable. When the owner of a LIP unit is ready to sell, the owner must give notice to the community and to DHCD. The deed rider contains strict timelines and it is imperative that, once notified of a LIP resale, the municipality acts swiftly to locate an income-eligible buyer. The Deed Rider should be submitted to the Town for review and approval.

The Application does not include Lottery and Marketing plan materials for the affordable units. The ACHC would like to review these materials when they are submitted. We will work with the developers in the preparation of lottery application materials.

ACHC voted to recommend the approval of this Special Permit.



## INTERDEPARTMENTAL COMMUNICATION

Acton Board of Health - Telephone 978-264-9634 - Fax 978-264-9630

June 19, 2006

TO: Kim DelNigro, Secretary

FROM: Doug Halley, Health Director

SUBJECT: Senior Residence Special Permit Application for Woodlands At Laurel Hill

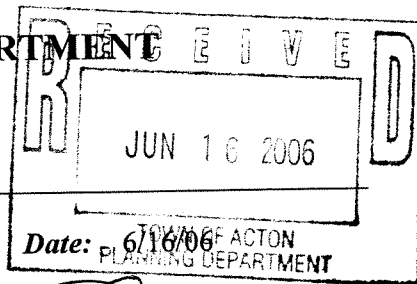
The Health Department has reviewed the plans and materials submitted to support a Senior Residence Special Permit Application for Woodlands at Laurel Hill and have the following comments:

1. The plans should include a detail that shows how the proposed sewer system connects to the proposed sewer system for the Woodlands Comprehensive Permit project.
2. The recycling center will require a permit from the Board of Health.
3. What provisions will be made for trash collection beyond the recycling center shown?
4. Water lines shall be sleeved whenever they are within 10' of a sewer line.
5. Sewer lines shall be sleeved whenever they are within 10' of a drain line.
6. The Health Department strongly recommends that no more than two units utilize the same sewer service. Multiple connections that travel within each unit can be inaccessible when a back-up occurs and can have adverse health effects.
7. Building sewer connections shall be at sewer manholes whenever feasible.
8. If building sewer connections are not at a sewer manhole than a sewer service chimney shall be provided.
9. The plans don't clearly show a water service for Unit 11B
10. Invert and Rim elevations for all sewer manholes shall be provided on the Utility Plan.



**ACTON MUNICIPAL PROPERTIES DEPARTMENT**

**INTERDEPARTMENTAL COMMUNICATION**



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**To:** Kim DelNigro, Planning Department

**From:** Dean A. Charter, Municipal Properties Director / Tree Warden

**Subject:** Review of Senior Residence Special Permit, Woodlands at Laurel Hills

---

I have reviewed the plans submitted for the above noted Senior Residence Special Permit; comments are as follows:

1. I have no problem waiving the 35 day review period
2. Landscape plans submitted are very similar or identical to those submitted earlier
3. Waiver under Section 9.8.1 (Street Trees) appears reasonable, as that standard was developed for more traditional subdivisions. The very dense development pattern represented by this present proposal precludes compliance with the letter of the regulation.
4. Waiver of compliance with Section 9.8.1 is consistent with the ZBA decision on the larger development.
5. The landscape plans submitted show plantings that are reasonable and acceptable for this site and use.
6. Prior to final inspection of the plantings by the Tree Warden, the applicant is to submit a letter, stamped and signed by the Landscape Architect of record, that the plantings were installed in compliance with commonly accepted industry practice, that they comply with the American Standard for Nursery Stock (ANSI Z60.1-2004), and that the actual plantings are consistent with the approved landscape plan.

**Roland Bartl**


---

**From:** Nancy Tavernier  
**Sent:** Thursday, June 15, 2006 1:20 PM  
**To:** Roland Bartl  
**Cc:** Stephen Anderson; David E. Hale  
**Subject:** DHCD ruling on Local Action Units

Roland,

I have heard from Marilyn Contreas, the DHCD LIP director in regard to the question I asked " Do the new age restricted LIP unit guidelines apply to Local Action Units created by zoning, etc.?"

This is her response:

**RE: The units created by local action in over 55 communities; DHCD could not apply the standards we are proposing for over 55 comprehensive permit projects. (However, I think they might serve as a basis for the town to ask some questions in a special permit request).**

That answer combined with this section of The Woodlands decision resolves the issue that I raised. The Special Permit will supercede the Comp Permit once it is filed and therefore the condos will no longer be part of the comp permit, if I interpret it correctly.

S.3 In the event the Acton Planning Board issues a special permit pursuant to Section 9B of the Acton Zoning Bylaw for the development and construction of a Senior Residence development with 10% affordability in lieu of the approved 40B development with 25% affordability on that portion of the Property in Acton designated as Lot 4 on the Revised Plans (the "Special Permit"), and in the event that portion of the Property in Acton designated as Lot 4 is developed in accordance with the Planning Board Special Permit, then (a) the provisions of the Special Permit shall govern the development and use of Lot 4 and shall supersede the provisions of this Comprehensive Permit as to the Condominium Component of the Revised Project, (b) all conditions of this Decision applicable to the Rental Component of the Revised Project shall remain in full force and effect, and (c) signage for the Revised Project shall be as approved by this Decision. **To avoid uncertainty as to whether the provisions of this Comprehensive Permit or the Special Permit apply to the development of Lot 4, the Applicant shall, by virtue of recording the Special Permit at the Middlesex South District Registry of Deeds and filing the Special Permit with the Middlesex South District Land Court Registration Office, as applicable, be deemed to have waived the right to develop Lot 4 under this Comprehensive Permit and shall be bound by the requirements of the Special Permit with respect to the development of Lot 4.**

I do think Marilyn makes a good suggestion about questions the Town should be asking about future age restricted development proposals, hopefully none will come. Once the new LIP guidelines are completed, you may want to match them up to any of the affordability wording in the current zoning bylaw.

I would say this issue is now resolved to my satisfaction. ACHC will be making comments to the

6/15/2006

Planning Board on the Special Permit. The condo affordable units at The Woodlands will still need to be counted by DHCD and that will require a new regulatory agreement and deed riders.

Nancy

6/15/2006

## Roland Bartl

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**From:** Nancy Tavemier  
**Sent:** Tuesday, June 13, 2006 7:39 PM  
**To:** Roland Bartl  
**Cc:** Stephen Anderson; David E. Hale  
**Subject:** RE: LIP new rules for 55+.doc



REVIEW DRAFT  
Part II.doc (175 ...

Roland,

The plot thickens even more. I have attached the 2nd section of the new LIP rules, still in draft form. Units created through local action, such as zoning, will be called Local Action Units. In order to be counted, they have to be approved by DHCD. That's what these will be, however they were also created with a 40B so they are a hybrid of sorts. It is not clear to me if the new rules of age restricted units apply to local action units. That will be a question for DHCD. In this case, the units were created by 40B but will be reworked into Senior Residence. So are they still 40B units? As for the date of the project, unfortunately the LIP application for the units (local action units) comes about 6-8 months before occupancy and the new rules will surely be in place by then. DHCD is indeed putting hurdles in the way of more senior units, they have serious concerns about them and are hoping the market forces will dissuade developers from building more. They currently have a request before them to convert a previously approved 55+ project into family housing because it is standing half empty. ACHC has been lukewarm about this plan for The Woodlands ever since it emerged from the dust of the Parcel 4 discovery.

The pertinent sections of this attachment are on pages 20-22. The highlights are mine, they are the sections that are new to me. The old rules had what was called Elderly Exception for the treatment of age restricted units. In those rules, all members of the household had to be 62 or older and could only take equity out of a house to a max of \$150,000. Apparently the old LIP rules also prohibited the exclusion of children but it was an unwritten policy.

Once approved, these new rules will comprise a manual that will make it much easier for all of us to follow procedurally. You will probably want to use the new language for many areas of your affordable housing re-write.

There is one other curious thing, units that have been created with CPA funds do not need to go through the LIP approval process. So any condos that we use CPA funds to buy down to an affordable price can be counted with a rather simple letter request to DHCD. This one is not going to be simple.

We are about to sign off on LIP applications for age restricted units at Ellsworth and Robbins Brook. These will be the first experience with the program.

Nancy

At 06:49 PM 6/13/2006, Roland Bartl wrote:

>This seems indeed intriguing. I don't know what the current rules are,

>if any, specific to senior affordable housing, but there appear to be  
>some things in the new rules that seem to hurdles to marketing  
>affordable senior housing units rather than being of any help. I would  
>have initially two questions to DHCD: Does the fact that both dates of  
>project application (40B and senior residence special permit) predate  
>the new rules exempt the project from the new rules? Do all sections  
>apply to LIP projects or only those where LIP is specifically  
>mentioned. For instance, bullet 6 may be appropriate for a senior  
>housing 40B project but seems to be overreaching for a LIP project that  
>is developed under local zoning?

>  
>I am not sure at this point how this would play itself out. As you  
>suggested in your other e-mail I am copying this to Town Counsel for  
>comment and David Hale as FYI.

>  
>Roland Bartl, AICP  
>Town Planner, Town of Acton  
>472 Main Street  
>Acton, MA 01720  
>978-264-9636

>  
>  
>-----Original Message-----

>From: Nancy Tavernier  
>Sent: Tuesday, June 13, 2006 11:41 AM  
>To: Roland Bartl  
>Cc: Kristin Alexander  
>Subject: LIP new rules for 55+.doc

>  
>  
>HI Roland,

>  
>Welcome back. I got a note from Kim to pick up the application for  
>Senior Residency project for The Woodlands and will do so today. ACHC  
>will take it up this week for comments. I just want to alert you again  
>to a whole new world out there for 55+ projects. The affordable units  
>in this project must adhere to the new LIP guidelines scheduled to be  
>approved by July 1. In order to be  
>counted, they have to be approved by DHCD. I have attached the  
>section on age restricted units. You may correctly assume DHCD has  
>raised the bar for DHCD approval and a market study is a must! These  
>projects are failing all over the state and they are trying to stem the  
>tide.

>  
>We will be including these guidelines in our comments but thought you  
>should have early warning for the PB and perhaps the developer too. I  
>have highlighted the sections that are particularly important and new.  
>For example, children cannot be excluded from the affordable units.

>  
>Nancy

### III. LOCAL ACTION UNITS

#### A. Description

Local Action Units (LAU), formerly known as “local initiative units” or “LIP Units Only,” are a program component that gives communities the opportunity to include housing units on the state’s Subsidized Housing Inventory (SHI) that were built without a Comprehensive Permit but which meet LIP criteria. Such units may have been built pursuant to a local action such as a zoning provision, a condition of a variance or special permit issued by the planning board or zoning board of appeals, a contract provision (e.g., reuse of municipal or school building as housing), or an agreement between the town and a non-profit organization to build or rehabilitate housing eligible for the SHI.

While communities are developing many innovative strategies to expand their supply of affordable housing, only units meeting the following criteria will be approved as LAU and added to the SHI for the municipality:

- (1) they have resulted from city or town action or approval.
- (2) they will be sold or rented on a fair and open basis and will be subject to an affirmative fair marketing and lottery plan approved by DHCD.
- (3) their sale price or rent is affordable to households at or below 80% of area median household income.
- (4) their long-term affordability is secured by use restrictions, approved by DHCD

#### B. Application Process

DHCD’s application form for LAU is available on the DHCD web site ([www.mass.gov/dhcd](http://www.mass.gov/dhcd)). DHCD expects to process routine applications within 60 days.

In order to ensure that locally-developed units will meet LAU standards, DHCD encourages communities to discuss their projects with LIP staff *prior* to submitting an application. LIP staff will highlight any areas of concern. To receive LAU approval, applications must reflect the guidance appearing below.

**DHCD reserves the right to reject LIP applications from those parties who have failed to meet material conditions of LIP or other state or federal subsidy programs, or have made material misrepresentations to DHCD in prior applications to LIP or other state or federal subsidy programs.**

### **C. Local Action Requirement**

Local Action Units must result from city or town action or approval and must be a condition of new construction, building conversion, adaptive re-use, substantial rehabilitation, special permit, or inclusionary zoning provisions. Units can not be developed with a comprehensive permit (for such projects see "Comprehensive Permit Projects").

Listed below are the types of actions that will generally be sufficient to satisfy the Local Action Requirement provided that the municipal actions or approvals are conditioned, as a matter of record, upon the provision of low or moderate-income housing:

- (1) Zoning-based approval particularly inclusionary zoning provisions and special permits for affordable housing.
- (2) Financial assistance from funds raised, appropriated or administered by the city or town.
- (3) Provision of land or buildings that are owned or acquired by the city or town and conveyed at a below-market cost.

**Please note:** Occupancy of existing housing units that are currently or have historically been occupied by low and moderate income households **DO NOT QUALIFY** for Local Initiative Unit designation unless all criteria as described in this section are met

### **D. Maximum Incomes, Sale Prices, and Rents**

Local Action Units must be created or converted for the specific purpose of serving low and moderate income households. The household income and eligibility requirements for such units are the same as for LIP Comprehensive Permit projects. (See the chart on page \_\_\_\_.) However, unlike comprehensive permit projects, sale prices and rents are set at what is affordable to a household earning 80% of area median income and are not required to reflect a 10% window of affordability.

#### *1. Homeownership*

The following chart (an electronic copy is available online at DHCD's website: [www.mass.gov/dhcd](http://www.mass.gov/dhcd)) shows how DHCD calculates maximum sale price of a 2BR unit in the Worcester HMFA:

**Determining the  
Maximum Sale Price  
Of a Local Action Unit  
(example)**

<b>Maximum Sale Price</b>	<b>\$148,800</b>
5% Down Payment	\$7,440
Mortgage	\$141,360
Interest Rate	6.83%
Amortization	30 years
Monthly P&I Payments	\$924.39
Tax Rate	\$10.02
Monthly Property Tax	\$124
Monthly Hazard Insurance	\$50
Monthly PMI	\$92
Monthly HOA Fees (if applicable)	\$100
<b>Monthly Housing Costs:</b>	<b>\$1,290</b>
# of Bedrooms	2
Sample Household Size	3
80% of AMI for a 3-person household	\$51,600
Target Housing Cost (30% of Income at 80% of AMI)	\$1,290

Comments: The goal is to have the monthly housing costs equal to 30% of the monthly income of a household earning 80% of the area median income.

The interest rate of 6.83% is a time-sensitive interest rate, approximately a quarter percent above the latest prevailing fixed 30-year rate as listed on Freddie Mac's interest rate survey.

a. Homeownership Association/Condominium Association Fees

DHCD will approve a maximum initial fee as part of the calculation of maximum sale price. For condominium units, the percentage interests assigned to the LIP units must conform to the approved condominium fees, which may require a lower percentage interest being assigned to those units as compared with market-rate units. DHCD must review the Schedule of Beneficial Interests in the Master Deed to confirm that LIP units have been assigned percentage interests in the condominium that correspond to the initial approved condominium fees.



## 2. Rental

LIP affordable rents often include heat, hot water, electricity and cooking fuel and, when there is no municipal trash collection, a trash removal allowance. However, if the utilities are separately metered, they may be paid by the tenant.

The maximum allowable LIP rent will be reduced to reflect the tenants' payment of one or more utilities, based on the area's utility allowance for such payments. Project Sponsors should contact the local/regional housing authority to obtain the appropriate Section 8 utility allowances for the community.

NOTE: Please indicate in the LIP application whether the proposed rent has been determined with or without some or all utilities.

The following chart demonstrates LIP maximum rent calculations for a project located in the Pittsfield HMFA:

Calculation of Maximum Rent For Local Action Unit (example)				
Pittsfield MSA	Household Size	80% of AMI	Monthly Income	Maximum Rent (30% of monthly income)
2BR Unit	3	\$51,600	\$4,300	\$1,290
3BR Unit	4	\$57,350	\$4,779	\$1,434

## E. Affirmative Fair Marketing and Lottery

The same standards applied to comprehensive permit projects apply to LAU applications. Please see pages \_\_\_\_\_ of these Guidelines and Appendices F and G for more information.

## F. Term of Restrictions; Use of DHCD Documents

The term of affordability for LAU projects should be in most cases *perpetuity* but exceptions are possible for good cause.

To be included on the Subsidized Housing Inventory, the minimum term of affordability for new construction (ownership or rental) is 30 years, and for substantial rehabilitation, it is 15 years.

Should the municipality determine that a term of perpetuity is NOT feasible for a LIP project, the city or town should seek a waiver under 760 CMR 45.09 – Waivers. The waiver request must establish good cause for a term shorter than “in perpetuity.” The

city or town should show that no displacement of low and moderate-income persons will occur once the term of affordability expires. The Director of DHCD has to sole authority to deny or approve any waiver request. (Note: LIP Regulations included as Appendix A)

**Any modifications to DHCD's model documents proposed by a developer or municipality must be shown in redlining against the model documents when submitted to DHCD for review. Local Initiative Program model documents shall be used, with only such modifications as have been approved by DHCD.**

#### **G. Project Monitoring; Taxation of Units**

*The premise of the Local Initiative Program is that DHCD and municipalities are working together to create affordable housing opportunities. As such, it is the Department's expectation that municipalities will work with DHCD to ensure compliance with obligations imposed by Regulatory Agreements and property restrictions. These responsibilities include:*

**For rental developments,** annual monitoring and certification to DHCD that:

- tenants continue to meet income and asset limits; and,
- the project has been maintained and operated in a manner consistent with the LIP Guidelines and the recorded Regulatory Agreement (if applicable).

**For ownership developments:**

- annual monitoring and certification to DHCD that LIP units continue to serve as owners' residences.
- annual certification to DHCD that any LIP units that have been resold during the year have been resold in compliance with LIP requirements.

**Taxation of Affordable Units:** *Additional local responsibilities include adherence to the Appellate Tax Board's 1999 ruling in Truehart et al v. Board of Assessors of the Town of Montague, in which the ATB determined that the restricted, below-market value of a unit is the valuation of the unit for real estate tax purposes..*

#### **IV. Accessory Apartments**

##### **A. Description**

Permitting the creation of accessory housing units within existing owner-occupied homes is a way to increase the supply and diversity of housing types. An accessory unit can provide an affordable alternative for those in need of rental housing. Accessory Apartments are usually apartments within new or existing owner-occupied single-family homes.

In order to have accessory apartments added to the Subsidized Housing Inventory, they must receive LAU approval and meet the same basic requirements as other units:

1. they have resulted from city or town action or approval.
2. they will be rented on a fair and open basis and will be subject to an affirmative fair marketing plan approved by DHCD.
3. their rent shall be affordable to households at or below 80% of area median household income.
4. their long-term affordability shall be secured by deeded use restrictions, approved by DHCD.

##### **B. Application Process**

An application for approval of Accessory Apartments shall be submitted in a form provided by DHCD and available on the agency website at [www.mass.gov/dhcd](http://www.mass.gov/dhcd). Applications shall include:

- (1) a letter of support signed by the chief elected official of the municipality.
- (2) a letter of support signed by the local housing partnership (if any)
- (3) an affirmative fair marketing plan and designation of a Local Project Administrator
- (4) a schedule of initial rents
- (5) a proposed tenant application form and plan for processing of applications
- (6) a proposed affordable housing restriction (model documents are available from DHCD)
- (7) a plan for annual verification of tenants' income.

After DHCD has approved the initial application, communities must submit additional information for each accessory unit. Accessory dwelling units that meet all program standards will be approved on a unit-by-unit basis.

### **C. Local Action Requirement**

To meet the requirement of local action, a municipality must have enacted a zoning by-law that allows for the creation of accessory apartments. Units submitted to DHCD will have received a special permit under the by-law.

While the specific features of such bylaws may vary considerably from one municipality to the next, in order to meet this local action requirement individual bylaws must, at minimum, allow for the creation of accessory apartments that meet and are consistent with the LAU eligibility standards described herein. Any mandatory requirements applying to accessory units authorized under the bylaw can not be in conflict with the LIP eligibility requirements.

DHCD strongly encourages communities contemplating such a bylaw to submit a draft to the agency for compliance review prior to final local approval. Examples of bylaw provisions that would prohibit approval under LIP and eligibility for the Subsidized Housing Inventory include:

- Allowing affordable accessory dwelling units to be rented to family members or relatives.
- Allowing affordable accessory dwelling units to be leased to households earning more than 80% of area median income.
- A requirement that all accessory dwelling units be restricted to households meeting local preference categories.
- Any provision in conflict with applicable fair housing laws.

Accessory apartment bylaws can allow for units in a variety of different forms (i.e., within an existing primary residence, new additions, detached, conversion of existing outbuildings). DHCD encourages flexibility and a full range of applications but also understands that communities may want to limit or tailor these approaches within the context of their existing zoning and development patterns.

### **D. Tenant Eligibility**

No employee, business associate, **or family member** of the unit owner or its management company may qualify for an Accessory Apartment.

#### *1. Income and Asset Limits*

Tenants' household income shall not exceed 80% of area median income based on household size as determined by HUD, but the municipality may set lower limits. In addition, tenant household assets may not exceed \$50,000.

Certification of income eligibility will be verified by the Local Project Administrator (LPA). The LPA is someone who is responsible for oversight of the units. This could be a local official, a local housing partnership board member or staff member,

the director of an area housing non-profit organization, or another appropriate person meeting DHCD approval.

The LPA will review documentation (e.g., recent tax returns, pay stubs, affidavits, etc) and document applicants' income and assets in writing.

Information on household members will be requested on the application for the unit and verified by the Local Project Administrator. Any post-occupancy change in the household must be reported to the property owner and Local Project Administrator immediately. A change in household size can affect applicable restrictions, such as the maximum income limit allowed for the household and compliance with state building code occupancy standards.

### **E. Affirmative Fair Marketing and Tenant Selection**

Accessory apartment units seeking Local Action Unit approval are subject to the same affirmative fair marketing/non-discrimination policies as all LIP units. There shall be a specific prohibition of discrimination on the basis of race, creed, color, sex, age, handicap, marital status, sexual orientation, national origin or any other basis prohibited by law in the leasing or sale of units.

The marketing plan should describe the outreach planned for media outlets such as newspapers/radio/local access television. It should list community-based organizations that will receive notice of availability of the affordable units, such as community development corporations, housing authorities, places of worship, and not-for-profit organizations, as well as any local employers. The plan should also include the establishment and maintenance of a waiting list of income-eligible households interested in renting such units.

Initial advertising of affordable accessory units shall be conducted over a period of 60 days.

The Local Program Administrator will determine applicants' eligibility and establish a "Ready Renters" list of interested and qualified applicants.

#### *1. Affirmative Fair Marketing*

The marketing plan shall specifically address advertising and outreach to minority organizations. The affirmative marketing goal is to achieve a percentage of minority tenancy in affordable accessory apartments that is at least equal to the percentage of minority households in the applicable HUD region.

While consistency with regional racial minority percentages is a goal as opposed to a minimum requirement, the Department will require corresponding data collection regarding the number of minority households renting units on an annual basis. DHCD reserves the right to investigate, modify, suspend or revoke the eligibility of units based upon a community's efforts and progress relative to this goal.

## *2. Tenant Selection*

In general, LIP requires that tenants be selected by a fair and equitable process such as a lottery. In the case of Accessory Apartments, where the arrangement may not lend itself to tenant selection through a lottery, the tenant selection process must feature a clearly outlined substitute process. For example

Step 1. The owner of an accessory apartment provides written notice of unit availability to Local Project Administrator.

Step 2. Within 5 business days, the LPA refers the top three appropriately-sized households on the "Ready Renters" list to the owner.

Step 3. The owner shall meet the three referred applicants and show them the unit. Referred applicants must be given no fewer than 10 business days to view the unit.

Step 4. The owner selects a tenant and signs a lease. If the owner has shown the tenant to all three applicants from the "Ready Renters" list, s/he may select one of them or another qualified individual to lease the unit. If the tenant selected is not on the Ready Renters list, income and asset eligibility must be verified by the LPA prior to signing the lease.

## *3. Property Owner Requirements/Acknowledgements*

The property owner must agree that a unit seeking LIP approval will be rented to a person or household whose gross income is 80% or less of the area median income of a household of their size and shall further agree that rents may not exceed those approved by DHCD. Typically, all utilities are included in the rent. However, if utilities are separately metered they may be paid by the tenant. In such cases, a Section 8 utility allowance provided by the local/regional Housing Authority shall be deducted from the maximum allowable rent.

Property owners must agree to execute and record an affordable housing restriction for LIP-approved accessory apartment units. The restriction will run with the property so as to be binding on and enforceable against any person claiming an interest in the property and will restrict the leasing of any such units as rental units to a person or family whose income is 80% or less of the median income of a household of their size for the applicable HUD area. An accessory apartment program may provide that a restriction is revocable upon sale of the property in an arm's-length transaction and at the end of a tenant's lease term in which case the unit may no longer be rented.

LPAs shall inform participating homeowners of their obligations and responsibilities with respect to the program. Homeowners shall be given, and acknowledge in

writing, their understanding of a complete program information package including but not limited to the following items:

- an overall description of the program, its goals and homeowner responsibilities
- a form, to be signed by the homeowner, acknowledging review of program materials and applicability of fair housing and anti-discrimination laws
- information on the notification, marketing, and tenant selection requirements when the unit is leased/turns over.
- information regarding occupancy requirements and use restrictions, including the term of affordability.

## F. Initial Affordability

Rents for accessory apartments are calculated in the same way as other LIP rental units. The maximum rent will be equal to 30% of the monthly income in the HUD area of a household equal in size to the number of bedrooms plus one. The rent for a studio apartment will be calculated based on a household size of one, a one bedroom's rent will be based on a household size of two, etc.

In general, LIP affordable rents include all shelter utilities (heat, hot water, cooking fuel, general electric, tenant -supplied cooking stove and refrigerator, and where there is no city trash collection, a trash removal allowance). However, if the utilities are separately metered, they may be paid by the tenant. The maximum allowable LIP rent will be reduced to reflect the tenants' payment of utilities, based on the area's utility allowance.

Determination of the utility allowance: LPAs should seek an appropriate Section 8 utility allowance from the local/regional housing authority.

A landlord may not increase the rent without the prior approval of the LPA and DHCD. An increase will be allowed only in proportion to growth in median household income as determined by HUD.

The following chart demonstrates LIP maximum rent calculations for an accessory apartment located in Springfield:

Calculation of Maximum Rent (example including utilities)				
Boston MSA	Household Size	80% of AMI	Monthly Income	Maximum Rent (30% of monthly income)
Studio	1	\$40,150	\$3,349	\$1,004
1BR	2	\$45,900	\$3,825	\$1,148

### *1. Lease Provisions*

The owner shall enter into a lease with each tenant for a minimum of one year which provides that the tenant shall not be evicted for any reason other than a substantial violation of a material provision of the lease. The lease is subject to all applicable state and federal laws, the review and approval by the applicable program administrator and should include the following:

- Tenant should supply a minimum of 30 days for notification prior to vacating the unit.
- On an annual basis, the tenant shall furnish information necessary to determine and document continued compliance with income eligibility requirements.
- Household status/declaration of the number of people in the household and their relationship to one another.

### **G. Use Restrictions**

Like all LIP units, LIP accessory apartment units are subject to affordable housing restrictions that require a *minimum* term of affordability of 15 years for existing/rehabbed units and thirty years for newly constructed units. To ensure affordability throughout the length of the term, affordable housing restrictions will be executed by a homeowner, the municipality, and DHCD, and recorded by town counsel in the registry of deeds/Land Court registry district. An Accessory Apartment unit will remain on the Subsidized Housing Inventory for as long as it is secured by the restriction and the unit is in compliance with the restriction and occupied by an eligible household.

An Affordable Housing Restriction may be terminated upon sale of the property to an unrelated party. If this occurs the Local Project Administrator shall notify DHCD and the unit will be removed from the SHI.

The Affordable Housing Restriction shall include provision for satisfaction of the requirements in 760 CMR 45.03, as well as the following: (a) a local public or quasi-public entity must be a holder of the restriction with the right and the obligation to enforce it during the term of affordability; (b) the restriction must provide for effective monitoring, and enforcement by the local public or quasi-public holder which may enter into a contract for monitoring services with a private entity experienced in affordable housing operation, but which retains final responsibility for ensuring compliance with the restriction; (c) the restriction shall provide for selection of eligible tenants of rental units in a fair and reasonable manner in compliance with fair housing laws, and such tenants shall be required to occupy the units as their domiciles and principal residences; (d) there shall be a term of no less than 30 years for new construction and of no less than 15 years for rehabilitation provided that the Use Restriction of an Accessory Apartment may be conterminous with the ownership of the dwelling to which it is accessory



**H. Monitoring**

Municipalities shall monitor their LIP-approved Accessory Apartments on an annual basis to verify their continued affordability and compliance with all income and occupancy restrictions contained in the long-term use restriction.

By January 15<sup>th</sup> of each year, the Local Project Administrator shall prepare an annual report (as of December 31 of the preceding year) summarizing the eligibility of all tenants in LIP approved accessory apartments and documenting rents being charged. This will be signed by the LPA. DHCD may request any and all supporting documentation. The Local Program Administrator must retain annual recertification materials for a minimum of five years.

In addition to rent and income verification, the annual report will provide information on the number of minority households served and the number of non-local residents served.

In the event of non-compliance, accessory apartments units may be removed by DHCD from the SHI.

## V. Age-Restricted Housing

- Age-Restricted Housing (housing for persons 55 and Over) will be reviewed and evaluated as described in these *Guidelines*. In addition, such projects must meet the following criteria:
- For LIP Units, there shall be no occupancy restriction except that one household member must be age 55 or older;
- Children age 18 or younger cannot be excluded from the LIP Units;
- Buildings of two or more stories must have an elevator serving all units. If this standard can not be achieved, a developer must request review of the project as an Alternative Development Plan (see page \_\_\_\_);
- The Project Sponsor's attorney should provide a letter demonstrating that the age-restricted development will be in compliance with state and federal fair housing laws, including M.G.L c. 151B Section 4(6);
- Approval may be granted for age-restricted housing only upon a showing of demonstrated need and marketability within the municipality, and solely at the discretion of DHCD. Such approval may be withheld (i) if age-restricted housing units that have been issued a project eligibility letter or have been approved by the municipality remain unbuilt or unsold, or (ii) if the proposed age-restricted units, in context with other recent housing efforts by the community, are unresponsive to needs for family housing.

A marketing study must be done demonstrating the need for this type of housing in the applicable HUD region, the availability of buyers for both the market and affordable units in the development, the status of similar projects serving the 55 and Over market in the area (e.g. number proposed and/or under construction, rate of vacancy/occupancy, etc). The study must demonstrate both an understanding of the region's demographics and particular strategies necessary to attract buyers to both market and affordable units.

- The LIP requirement that preference be given to appropriately sized households applies to 55 and Over housing. However, the standard LIP requirement for first-time homebuyers does not apply if a presently owned home in which there is equity of \$200,000 or less will be sold.

### *Income and Assets of Elder Households*

The assets of elder households, that is households in which at least one member of the household is age 55 or older, are treated differently than other LIP eligible households. The primary reason for this is that elder households are more likely to already own a home, which

they plan to sell in order to move to a smaller one, and are more likely to be living on a fixed income.

The following items apply to 55 and over households:

1. Elder households may purchase a LIP unit with cash.
2. If the purchase is financed, only the occupants of the unit may sign the mortgage.
3. Elder households must meet an income and asset test.

For tenants and purchasers household income shall not exceed 80% of area median income based on household size as determined by HUD, but lower limits may be set by communities and submitted for DHCD review and approval.

For homeownership units, household assets shall not exceed \$50,000 in value, provided that in the case of age-restricted homeownership units the purchaser household may additionally own a dwelling (to be sold) in which the purchaser has no more than \$200,000 in equity. The value of assets shall be computed on the basis of net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding equity accounts in HUD homeownership programs or state assisted public housing escrow programs. The value of necessary items of personal property, such as furniture or automobiles, shall be excluded.

Determination of assets shall be based upon a full and fair present cash value of the asset at the time of application to the program. If a potential purchaser divests him/herself of an asset for less than full and fair cash value of the asset within two years prior to application, the full and fair cash value of the asset shall be included for purposes of calculating eligibility.

#### 4. *Life Estates*

A life estate is an interest in real property which entitles the life tenant to benefit from the property until his or her death. Usually, the life tenant is entitled to the use of a house for life and may be entitled to sell his or her interest. This right is of value to the life tenant, but it is rarely sold on an open market. (Purchasers of real property would typically not be tempted by such an uncertain term of ownership.)

DHCD includes the value of an applicant's life estate when calculating his or her assets. DHCD will use the Internal Revenue Service's latest guidance to determine the value of life estates such as Book Aleph, publication 1457 (7-1999), Catalog Number 63854M.

Please see Appendix I for more details concerning the determination of assets.

## **VI. RESALES and REFINANCING**

Over time, the LIP Deed Rider is the most critical tool for ensuring that a homeownership unit remains affordable. When the owner of a LIP unit is ready to sell, the owner must give notice to the community and to DHCD. The deed rider contains strict timelines and it is imperative that, once notified of a LIP resale, the municipality acts swiftly to locate an income-eligible buyer.

Each municipality should have a resale plan in place for LIP units. The municipality community should create and maintain a list of income-eligible potential buyers. This type of list could be created by compiling a list of lottery applicants for an affordable development who were not chosen as buyers. This list becomes stale 24 after the prior lottery. The municipality may then create a new “ready buyer” list through the use of a lottery process after conducting affirmative fair marketing. This process must be pre-approved by DHCD. If the municipality is approved as the monitoring agent for its LIP units, a resale fee provision may be added to the LIP Deed Rider, which allows a fee of up to 2% to be added to sale price upon resale. The resale fee is paid by the new buyer.

DHCD has contracted with the state-wide Massachusetts Non-Profit Housing Association (MNPFA) to coordinate the resales of affordable units. For each of its service areas, MNPFA maintains a “ready buyer” list of income eligible buyers and will advertise the unit, certify the buyer’s income eligibility, and assist the buyer with the mortgage and the loan closing. Local communities may wish to contact MNPFA to assist them in managing the resales of their affordable LIP units.

### Steps for LIP Unit Resale

5/12/06 Needs to be updated with procedure in new Fannie Mae-Approved Deed Rider

#### **1. Property Owner Notifies Local Community and DHCD**

The property owner shall hire a licensed residential appraiser to perform a full appraisal report for their property. The home should be appraised as a market rate property and the appraisal report should be no older than 120 days past its completion date.

The property owner shall submit the appraisal, a copy of their deed rider, and a written notice of their intention to sell to the municipality **and** to DHCD.

The property owner’s written notice should include their name, the property address, a phone number where they can be reached during the day, and the name and phone number of the person responsible for showing and answering questions about the home.

## 2. Maximum Resale Price

After receiving notification, the local community sends a response letter to the seller within 30 days exercising its right of first refusal. (DHCD has 40 days to respond to the seller's letter if the local community does not exercise its right of first refusal). The response letter will state the price for which the seller may sell their home. This price is called the *maximum resale price*. For a period of 90 days, the community and/or DHCD reserve the right to restrict the sale of the home to a buyer who is income-eligible under the LIP program. This is the "*right of first refusal period*", and the expiration date of this period is included in the response letter.

**PLEASE NOTE:** Most older LIP deed riders use a discount rate formula - calculated by multiplying the home's current appraised value (as shown on the appraisal report) by the discount rate specified in the LIP deed rider. Many of these LIP deed riders set an alternative maximum resale price at what a low or moderate household can afford. **The current model deed rider uses a maximum resale price multiplier, which ties increases in resale prices to the increases in median income.**

The local community must confirm the *maximum resale price* with DHCD staff before they respond to the homeowner in writing.

During the right of first refusal period, the seller may sell their home for **no more than** the maximum resale price to an eligible purchaser designated by the municipality and DHCD. The maximum resale price of the home is calculated by using a formula that appears in the LIP deed rider.

## 3. Marketing the Unit

During the *right of first refusal period*, the municipality should offer the unit to its list of potential buyers on its list, in order. DHCD has contracted with the statewide Massachusetts Nonprofit Housing Association to assist in the marketing of the LIP resale units. Contact DHCD for the agency in your area.

DHCD will post information about the unit at:  
[www.massdhcd.com/HOP/MainMenu.aspx](http://www.massdhcd.com/HOP/MainMenu.aspx).

## 4. The New Buyer

The new buyer shall be income eligible under the LIP program and have no more than \$50,000 in assets. The income limit is 80% of the area median household income of a similarly sized household as determined by HUD. The LIP program requires the buyer to obtain a fixed rate mortgage with no more than 2 points, and

an interest rate that is no more than 2% above the current MassHousing interest rate ([www.masshousing.com](http://www.masshousing.com)).

When the buyer's eligibility has been verified, both the seller and the buyer should retain legal counsel and sign a purchase and sales agreement. Documentation verifying the buyer's income, assets, and mortgage terms should be mailed or faxed to the municipality (or DHCD, if the municipality did not exercise its right of first refusal). The closing attorney then contacts DHCD's paralegal to obtain closing documents.

If an eligible buyer is not located during the right of first refusal period, the home may be sold without regard to the income level of the buyer. If the home is sold to an ineligible buyer after the expiration of the right of first refusal period, it must be sold for market value and *any proceeds over the Maximum Resale Price will be recaptured by the local community*, and earmarked for homeownership programs or assisting other eligible buyers. *To be updated with new Fannie Mae Deed Rider information.*

### **Steps for LIP Unit Refinance**

#### **1. Property Owner Notifies Local Community and DHCD**

The property owner must hire a licensed residential appraiser to perform a full appraisal report for their property. The home should be appraised as a market rate property and the appraisal report should be no older than 120 days past its completion date.

The property owner must submit the appraisal, a copy of their deed rider, and a written request to refinance to the local community **and** to DHCD.

The property owner's written request should include their name, property address, a phone number where they can be reached during the day, the amount of the refinance or second mortgage requested, the name and contact number of the closing attorney and the full name of the lending institution.

The property owner must also submit a copy of the commitment letter from the lender, including the amount of the refinance or second mortgage, the interest rate, points, and term of the loan (i.e. 15-yr, 30-yr).

The proposed new first or second mortgage should meet these guidelines:

- Have a fixed rate through the full term of the mortgage
- Have a current fair market interest rate - no more than 2 percentage points above the current MassHousing interest rate ([www.masshousing.com](http://www.masshousing.com))
- Have no more than two points

- For 1<sup>st</sup> mortgage refinance: The loan amount cannot exceed 95% of the Maximum Resale Price, as determined by DHCD
- For 2nd mortgage: The combined amount of the first and second mortgages cannot exceed 95% of the Maximum Resale Price, as determined by DHCD

After approval of the refinance request by the local community **and** DHCD, DHCD will prepare the *Consent to Refinance* form for the closing attorney.

DRAFT

5-12-06

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5-12-06

DRAFT

*Local Initiative Program Guidelines  
Resales and Refinancing*



## Roland Bartl

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**From:** Nancy Tavernier  
**Sent:** Tuesday, June 13, 2006 4:17 PM  
**To:** Roland Bartl  
**Subject:** Senior bylaw

Roland,

I have just read The Woodlands proposal fro the 55+ units and then the Senior Residence bylaw. I do not see a specific requirement in the Bylaw that says the units must be counted toward the Town's 10% and yet that has to happen according to the comp permit. This is going to be a classic dilemma. The cover letter for the project makes it very clear that time is money, some \$800,000+ to the Town. If the project gets delayed, the money goes away. However in order to be counted the units will ultimately have to be approved by DHCD with the LIP program, unless MassDevelopment has a counting program which I doubt. If The Woodlands does not meet the new LIP guidelines, they may not get approved. Then what?

This puts ACHC in a very awkward position and we may well refuse to be monitoring agent since the affordability requirements in the LIP guidelines will not be met.

Steve is away this week but this is definitely something that has to be run by him.

Nancy

## Roland Bartl

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**From:** Nancy Tavernier  
**Sent:** Tuesday, June 13, 2006 11:41 AM  
**To:** Roland Bartl  
**Cc:** Kristin Alexander  
**Subject:** LIP new rules for 55+.doc



LIP new rules for  
55+.doc (27 ...

HI Roland,

Welcome back. I got a note from Kim to pick up the application for Senior Residency project for The Woodlands and will do so today. ACHC will take it up this week for comments. I just want to alert you again to a whole new world out there for 55+ projects. The affordable units in this project must adhere to the new LIP guidelines scheduled to be approved by July 1. In order to be counted, they have to be approved by DHCD. I have attached the section on age restricted units. You may correctly assume DHCD has raised the bar for DHCD approval and a market study is a must! These projects are failing all over the state and they are trying to stem the tide.

We will be including these guidelines in our comments but thought you should have early warning for the PB and perhaps the developer too. I have highlighted the sections that are particularly important and new. For example, children cannot be excluded from the affordable units.

Nancy

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- The Project Sponsor's attorney should provide a letter demonstrating that the age-restricted development will be in compliance with state and federal fair housing laws, including M.G.L c. 151B Section 4(6);
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A marketing study must be done demonstrating the need for this type of housing in the applicable HUD region, the availability of buyers for both the market and affordable units in the development, the status of similar projects serving the 55 and Over market in the area (e.g. number proposed and/or under construction, rate of vacancy/occupancy, etc). The study must demonstrate both an understanding of the region's demographics and particular strategies necessary to attract buyers to both market and affordable units.

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determine the value of life estates such as Book Aleph, publication 1457 (7-1999), Catalog Number 63854M.

Please see Appendix I for more details concerning the determination of assets.

**Roland Bartl**

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**From:** Stephen Anderson  
**Sent:** Wednesday, April 26, 2006 8:01 AM  
**To:** Roland Bartl  
**Cc:** Don Johnson; John Murray  
**Subject:** Acton/40B Laurel Hill: Special Permit Conditions

Roland:

If the Planning Board approves the Special Permit for the Senior Development, then the Planning Board needs to be careful to draft a thorough set of conditions (which can be modeled after the conditions in the comp permit) because the comp permit conditions will no longer apply to the Senior Development under condition S.3 of the comp permit:

**S.3** In the event the Acton Planning Board issues a special permit pursuant to Section 9B of the Acton Zoning Bylaw for the development and construction of a Senior Residence development with 10% affordability in lieu of the approved 40B development with 25% affordability on that portion of the Property in Acton designated as Lot 4 on the Revised Plans (the "Special Permit"), and in the event that portion of the Property in Acton designated as Lot 4 is developed in accordance with the Planning Board Special Permit, then (a) **the provisions of the Special Permit shall govern the development and use of Lot 4 and shall supersede the provisions of this Comprehensive Permit as to the Condominium Component of the Revised Project**, (b) all conditions of this Decision applicable to the Rental Component of the Revised Project shall remain in full force and effect, and (c) signage for the Revised Project shall be as approved by this Decision. To avoid uncertainty as to whether the provisions of this Comprehensive Permit or the Special Permit apply to the development of Lot 4, the Applicant shall, by virtue of recording the Special Permit at the Middlesex South District Registry of Deeds and filing the Special Permit with the Middlesex South District Land Court Registration Office, as applicable, be deemed to have waived the right to develop Lot 4 under this Comprehensive Permit and shall be bound by the requirements of the Special Permit with respect to the development of Lot 4.

I will gladly work with you at the time to draft these.

Steve

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Stephen D. Anderson  
ANDERSON & KREIGER LLP  
43 Thorndike Street  
Cambridge MA 02141-1764  
Phone: 617-252-6575  
Fax: 617-374-7506  
e-mail: sanderson@andersonkreiger.com  
[www.andersonkreiger.com](http://www.andersonkreiger.com)

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4/26/2006

ACTON PLANNING DEPARTMENT  
Inter-departmental Memo  
978-264-9636

**Date:** June 12, 2006

**To:** Assessors  
Conservation Commission  
Fire Department  
Municipal Properties  
Water District  
Building Commissioner  
Engineering Administrator  
Health Department  
Police Department, fyi  
Acton Community Housing Corporation, fyi

**From:** Kim DelNigro, Secretary

**Subject:** Senior Residence Special Permit Application for Woodlands at Laurel Hill

Attached is an application for **Senior Residence Special Permit Application for Woodlands at Laurel Hill**. General information about the address is as follows:

Location: Lot 4, off Laurel Hill Drive  
Applicant & Owners: Woodlands at Laurel Hill, LLC – David E. Hale, Manager  
Address: c/o Omni Properties, LLC, 676 Elm Street, Suite 3  
Concord, MA 01742  
Engineer: PLACES Site Consultants, Inc.  
Units: 64  
Street Name: off a portion of Laurel Hill Drive  
Street Length: 1300 +/-  
Map: B-5  
Parcel: 7  
Zoning: R-8/10; Affordable Housing Overlay District Sub district A

Please review the enclosed application and send your comments to the Planning Department no later than June 30, 2006. The public hearing is scheduled for July 11, 2006 at 7:45 PM.

We have also received copies of **large plans** and storm water analysis booklets. If you need to review the booklets or have any questions, please call the Planning Department at 264-9636

Review Comments: *I have reviewed the application and I do not have any comments*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_